

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RODNEY CARL WHEELER,

Petitioner,

v.

PAT GLEBE,

Respondent.

Case No. C10-5915BHS

ORDER DENYING
PETITIONER'S MOTION TO
WITHDRAW WITHOUT
PREJUDICE AND ADOPTING
REPORT AND
RECOMMENDATION


This matter comes before the Court on the Report and Recommendation ("R&R") of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 16) and Petitioner's Motion to Withdraw Without Prejudice (Dkt. 19).

In Petitioner's motion to withdraw, he argues that he has the right to voluntarily dismiss his case pursuant to Fed. R. Civ. P. 41. Dkt. 19 at 1-2. Petitioner requests that the Court dismiss his petition without prejudice so that he may exhaust his federal claims in state court. *Id.* at 2. Judge Strombom, however, found that Petitioner "is now procedurally barred from exhausting his federal claims in state court." Dkt. 16 at 9. The Court agrees with and adopts that finding. Therefore, although the Court may dismiss this petition without prejudice (Fed. R. Civ. P. 41 (a)(2)), the Court denies Petitioner's motion to voluntarily dismiss the petition without prejudice because Petitioner is barred from presenting his federal claims in state court.

1 With regard to the R&R, the Court has considered the R&R and the remaining record,
2 and no objections to the R&R having been filed, does hereby find and order as follows:

- 3 (1) Petitioner's Motion to Withdraw Without Prejudice (Dkt. 19) is **DENIED**;
4 (2) The R&R is **ADOPTED**; and
5 (3) This action is **DISMISSED without prejudice**.

6 DATED this 17th day of May, 2011.

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9 BENJAMIN H. SETTLE
10 United States District Judge
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